

LEGISLATIVE UPDATE

Clerks of the Circuit Court
June 2015

SEA 2 and HEA 1371 - Mailing

- Amends IC 33-32-2-10 Effective July 1, 2015
- Initial mailing means the service of complaint, pleading, or similar document on a party upon the commencement of an action. Does not include any subsequent service, even if could have or should have been served at the commencement of the action
- Registered or certified mail includes any means of delivery that provides a return receipt
- The initial mailing to not more than 2 parties and to only 1 of each party's addresses

SEA 2 and HEA 1371 – Mailing (con't)

- After initial mailing if a person requests the clerk to send by registered or certified mail the person must provide
 - An envelope with sufficient postage affixed, with recipient address and clerk's office as return address
 - The forms for registered or certified mail and if return receipt is requested the form must be completed so that the clerk's office receives the return receipt
 - Fee for the appropriate service by registered or certified mail and return receipt if requested

The clerk may not collect any additional fee for sending a mailing

HEA 1371 – Document Fee

- Amends IC 33-37-5-2 Effective July 1, 2015
- Provides that fees for preparing a transcript or copy of any record under IC 33-37-5-1 shall be deposited into the clerk's record perpetuation fund
- Before deposited into the general fund
- Document fees collected under IC 33-37-5-3 and -4 are still deposited into the general fund

SEA 217 – Sheriff Service of Process Fee

- Amends IC 33-37-5-15
- Increases service of process fee from \$13 to \$25
- Sheriff may still only collect fee one time for the duration of the case but may collect an additional \$25 per case for any post judgment service

SEA 251 – Controlled Project

- Amends IC 6-1.1-20-3.1 and IC 6-1.1-20-3.6
- Effective July 1, 2015
- Person that owns property or registered voter within political subdivision
- File petition of objection with DLGF if thought that capital project being artificially divided to avoid this chapter
- Must be filed not more than 10 days after political subdivision makes preliminary determination to issue bonds or enter into lease for project

SB 393 - Surety Bonds

- Amends IC 5-4-1-5.1 Effective July 1, 2015
- Official bond filed with the fiscal officer of the political subdivision in addition to the county recorder
- For recorder still will file with county clerk but also with county auditor
- Fiscal officer will file with SBOA through gateway at time that the unit's annual report is filed
- Gateway will have available whether each individual who is to have filed has filed an official bond for faithful performance

SB 393 - Surety Bonds (Con't)

- Individual surety bonds are now also required of:
 - Employees or contractors of the county whose official duties include
 - Receiving, processing, depositing, disbursing, or otherwise having access to funds and not otherwise named
 - Bond amount at least \$5000
- Fiscal body may by ordinance authorize a blanket bond that
 - Is endorsed to include faithful performance and
 - Includes aggregate coverage sufficient to provide coverage amounts specified for those who are required to file a bond under this chapter

SB 393 - Surety Bonds (Con't)

- Amends IC 5-4-1-18
- Individuals shall file and maintain in place an individual surety bond during each year that the individual serves.
- Each bond must have a term of 1 year commencing on the first day
 - Of the calendar year
 - Fiscal year of the unit or
- Individual's service in the office or position for which a bond is required
- Consecutive yearly bonds filed by an individual must provide separate coverage for each year.
- The aggregate liability of the insurer for a policy year is the sum of the amounts specified in the bonds issued for the year

SB 393 - Surety Bonds (Con't)

- The fiscal body may by ordinance authorize a crime insurance policy that provides coverage for criminal acts or omissions committed by officers, employees, contractors, commission members, and persons acting on behalf of the county
- The state is considered to be an additional named insured for purposes of recovering public funds on behalf of the county

SB 394 – Reporting of Government Malfeasance

- Amends IC 5-11-1-9.5 Effective July 1, 2015
- An individual may report suspected malfeasance, misfeasance, or nonfeasance by a public officer to SBOA.
- Individual's identity is confidential unless court order
- Individual may not be retaliated against by public office or officer
- Not to be confused with:
- IC 5-11-1-27 (c) All erroneous or irregular variances, losses, shortages, or thefts of local government funds or property shall be reported immediately to the state board of accounts

SEA 415 – Mortgage Foreclosure Counseling and Education Fees

- Adds IC 33-37-5-33
- Provides that the clerk is required to collect as part of civil costs for a mortgage foreclosure action a \$50 mortgage foreclosure counseling and education fee to be distributed semiannually to the state

SB 489 – SBOA Access to Vendors

- Adds IC 5-11-1-29 Effective July1, 2015
- If requested a vendor shall allow SBOA to access:
 - All software, including information and data that is stored in the software
 - And records of computer services that a vendor has supplied to the political subdivision
- Access is:
 - Limited to read only capability
 - Provided to SBOA without prior notice or approval of the political subdivision
 - Provided as remote access if requested

SEA 500 and HEA 1001 - Interest

- Amends IC 5-13-9-8 Effective July 1, 2015
- A service charge may be paid as a direct charge to the deposit or in manner that subtracts from interest earned
- If subtracted from interest earned then only the net is receipted and booked

SEA 528 – Public Records

- IC 4-5 is amended throughout to change the name of the Commission on Public Records to Indiana Archives and Records Administration

HEA 1001 – Fee Changes

- Amends IC 33-37-5-21
- Increases automated record keeping fee from \$7 to \$19 except for diversion/deferral \$5
- Amends IC 33-37-5-2 and IC 33-37-7-2
- Automated record keeping fees 100% to state automated record keeping fees, no portion to clerk's perpetuation
- For pretrial diversion and deferral no change, still distributed to state automated diversion/deferral
- Amends IC 33-37-5-20
- Document storage fees increase from \$2 to \$5
- Goes to clerks perpetuation fund but \$3 may be specified as used for purposes of case management system if not JTAC

HB1001 SBOA Examinations

- Amends IC 5-11-4-3 Increases rate charged for an audit to a unit to \$175
- Creates a trust and agency fund at the state for fees to be deposited into
- Fund to be used by State Examiner for examinations

HB 1104– SBOA Examinations

- Adds IC 5-11-1-24.4 Effective July 1, 2015
- Audited entity that has:
 - An internal control officer; and
 - An internal control department;
- Established by the legislative body may request in writing to SBOA that:
 - They opt out of examination by SBOA and
 - Engage a CPA
- The request must be adopted through resolution by the legislative body

HB 1104 – SBOA Examinations (Con't)

- SBOA within 60 days after receiving the request will approve or disapprove the request
- Approval based on:
 - Request filed more than 180 days before beginning of fiscal year
 - The selection process of the CPA follows the statutory requirements:
 - Must be licensed in Indiana and qualified to conduct examinations in accordance with SBOA guidelines which include:
 - Issuing findings that are in noncompliance with SBOA uniform compliance guidelines which will become part of a public report
 - The CPA will be paid for by the audited entity
 - SBOA may still conduct a compliance review

HB 1104– SBOA Examinations (Con't)

- Amends IC 5-11-1-25 Effective July 1, 2015
- Annual audits of units by SBOA not required
- Risk based examination that are
 - Established by SBOA and approved by the audit committee
- Risk factors include:
 - There is a newly elected or appointed fiscal officer
 - The annual report was either not timely filed or materially incorrect
- May not occur less than once every 4 years

HB 1104 – SBOA Examinations (Con't)

- Exceptions to where an annual audit is required:
 - Federal requirements when there is federal financial assistance
 - Due to continuing disclosure requirements or
 - As a condition of a public bond issuance
- Must provide notice to SBOA that the entity is required to have an annual audit due to these conditions not later than 60 days after the close of the fiscal year
- Amends IC 5-11-1-18
- All examinations by SBOA may be made without notice before it was required to be without notice

HB 1104– SBOA Examinations (Con't)

- Amends IC 5-11-5-1 defines exit conference
- As part of the review of the examination report SBOA will hold a gathering of officer examined, any employees or agents who are requested and legislative and fiscal bodies. This is referred to as an exit conference
- All information discussed and materials presented or delivered by any person during an exit conference are confidential expect to those officers, employees, attorney, etc. of the county who were not present. The confidentiality applies to them as well
- A person may not electronically record an exit conference
- An exit conference is not a meeting as defined under IC 5-14-1.5
- As a result of additional actions taken due to exit conference an additional exit conference may be called

HB 1104 – SBOA Examinations (Con't)

- The information and materials that are part of an exit conference and the results of an examination including a preliminary report are confidential until:
- The final report is made public
- The state examiner has authorized publicity
- The AG has instituted action on the basis of a preliminary report
- If a person knowingly or intentionally discloses information it is a class A infraction

HB 1104– SBOA Examinations (Con't)

- Unless with a judicial order or specified in statute, the state board of accounts, its employees, former employees, counsel, agents, or any other person may not divulge the examination workpapers and investigation records except to internal employees, the audit committee, law enforcement, AG, prosecuting attorney, or authorized representative of the US.

HB1104– SBOA Examinations (Con't)

- If an examination report shows or discloses the commission of a crime by any person, the state examiner's duty is to present the report to the prosecuting attorney of the county in which the crime was committed.
- Before it was to the grand jury

HB 1104– Fraud Hotline(Con't)

- Adds IC 36-1-8-8.5 and amends IC 5-14-3-4
- Provides that the executive or fiscal officer of a unit may establish a fraud hotline number maintained by the unit where the public may report suspected fraudulent activity concerning officers and employees of the unit
- The identity and information from the hotline is considered confidential except that it may be disclosed to law enforcement, attorney general, inspector general, prosecuting attorney or SBOA.

HEA 1140 – Election Inspector

- Adds IC 3-6-6-38.5 Effective July 1, 2015
- Provides that one individual may serve as the inspector for more than 1 precinct at a shared location
- The county executive may provide that the per diem paid to such an inspector is greater than the per diem for an inspector of a single precinct

HEA 1141 – Judgment Docket

- Amends IC 33-32-3-2 Effective July 1, 2015
- The clerk shall keep a circuit court judgment docket and a judgment docket for each court served by the clerk under IC 33-32-2-1
- Clerk is the official keeper
- Docket may not include judgments in which money is owed by a person to a state county or another governmental entity as a result of criminal conviction, violation of an infraction or ordinance or judgments in which the state, county or another governmental entity is the sole creditor except for cases in which the state obtains a judgment for unpaid taxes or any entry required by statute

HB 1264 Internal Controls

- Amends IC 5-11-1-27 Effective July1, 2015
- SBOA will define and the audit committee approve the acceptable minimum level of internal control procedures and standards for internal control systems of political subdivisions
- Will include:
 - Control environment
 - Risk assessment
 - Control activities
 - Information and communication
 - monitoring

HB 1264 Internal Controls (Con't)

- After June 30, 2016 the legislative body will ensure that
- The internal control standards and procedures are adopted
- Personnel receive training concerning the adopted standards and procedures
- The fiscal officer shall certify to SBOA at the time of annual report that these requirements have been met
- If found in audit that the adoption and training have not occurred
 - SBOA will issue comment
 - In subsequent audit if either still not done and not corrected within 60 days of notification then information forwarded to DLGF and the budget will not be approved

HB 1264 Internal Controls (Con't)

- All erroneous or irregular material variances, losses, shortages, or thefts must be reported immediately to SBOA
- A public officer who has actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds or assets
- Shall immediately send written notice to:
 - SBOA
 - County prosecutor

HEA 1281 – Daily Deposit

- Amends IC 5-13-6-1 Effective July 1, 2015
- A local officer of a political subdivision required to deposit funds are not required to deposit funds on the next business day if the funds on hand do not exceed \$500
- Must be deposited the business day following the day that the funds exceed \$500

HEA 1302 – Expungement Fee

- Amends IC 35-38-9-8 Effective July 1, 2015
- A person who files a petition under this section is required to pay the filing fee required in civil cases. The court may reduce or waive this fee if the person is indigent.

HEA 1304 – Court Appointed Forensic Advocate for Persons with Disabilities

- Adds IC 35-36-12 Effective July 1, 2015
- The court may order person assisted by the advocate to pay a user fee to the court appointed forensic advocate program or individual who served as a court appointed forensic advocate
- If a user fee is ordered the program or individual shall report to the court receipt of payment not later than 30 days after receiving payment

HB 1371 – Common Law Lien

- Amends IC 32-28-13 Effective July 1, 2015
- Common law liens of property owned by a public employee or public official (currently holds office or has at any time during preceding 4 years)
- IC 32-28-13-5 provides that a lien holder record a statement and that the statement be sent by the recorder to the property owner
- New- the statement must now include that if the property owner is a public official or public employee who has filed a written notice in accordance with IC 32-28-13-6.5 the common law lien is void 30 days after filing the written notice if suit has not been commenced

HB 1371 – Common Law Lien (Con't)

- IC 32-28-13-6.5 added
- If a public employee or official receives a statement of intention then they may provide written notice to the recorder swearing and affirming that they the property owner are a public official or employee.
- Not later than 3 business days after receiving the recorder must send to the lienholder
 - A copy of the property owner's written notice
 - A statement that if the lienholder does not commence suit within 30 days the lien is void
 - The notice must be by certified mail with return receipt
 - The recorder shall record the date the statement is mailed to the lienholder
- The recorder will send a copy of the notice to the property owner

HB 1371 – Address Restrictions (Con't)

- Amends IC 36-1-8.5 Effective July 1, 2015
- Adds covered official to be a public official (person who holds or formerly held office during preceding 4 years)
- Now the unit shall instead of may establish a process to prevent general public gaining access to the home address of a covered person through public property data base web site
- Unit must
 - Determine the forms of written request
 - Specify any information or verification required
 - Determine which person or department will receive and process request
 - Provide a method which a covered person is notified of procedure to be used
- Unit may charge a reasonable fee